

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 758 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESHCHADRA VADILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR NITIN M AMIN for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/08/98

ORAL JUDGEMENT

#. Heard Mr.Amin, learned advocate appearing for the petitioner.

#. Rule. Learned APP, Mr.M.A.Patel waives service of Rule on behalf of the respondent No.1 - State. By consent of the parties, this matter is taken for final hearing.

#. The petitioner has approached this court being

aggrieved by order passed by learned Metropolitan Magistrate, Court No.9, Ahmedabad in the inquiry proceedings arising from offences registered with Navrangpura Police Station vide No.I-572 of 1997 on 12th January,1998. That vide impugned order, the trial court has rejected the application of the present petitioner claiming custody of the mudamal articles consisting of ornaments and cash pending enquiry and trial.

#. It has been contended on behalf of the petitioner that an offence was registered at Navarangpura Police Station vide No.I-572 of 1997 on the information given by the present petitioner in respect to offences committed and made punishable under Section 365, 342, 394, 387, 398 read with 114 of IPC and Section 25(1)(c) of Arms Act. That during the investigation, Navarangpura Police has recovered an aggregate amount of Rs.6,85,000/- and some ornaments as well as household articles like TV, fridge, Washing machine, furniture etc. That the said Mudamal articles are produced before the Metropolitan Magistrate Court No.9 and thereby present petitioner moved an application dated 26th December,1997 claiming custody of the mudamal articles and cash pending inquiry and trial. That the Learned Metropolitan Magistrate vide first Order dated 26th December,1997 directed the Police Inspector, Navrangpura to file a report along with detailed Panchname etc. That on 27th December,1997, police inspector, Navarangpura Police Station, Ahmedabad filed a detail report as called for by the trial court and stated therein that on 25th November,1997, the police has recovered gold ornaments, Maruti ZEN car, cycle, revolver, hockey etc. in all 14 articles from the possession of accused No.1 - Jashu alias Jashwant residing at Morbi City, Vijaynagar Society. A panchnama made for the same was also produced along with a report. That the said articles are produced in the Court vide mudamal receipt No.294/97 dated 25-11-97. It is also stated in the report that as per the earlier order of the Court, the custody of the Maruti Zen Car was returned to the petitioner on 25-11-97. That remaining mudamal articles for an aggregate amount of Rs.7,86,800/- which includes cash amount of Rs.3,86,000/- are still lying with the Court. That on 4-12-97, the police has recovered cash amount of Rs.3,65,000/- from the custody of witness one Ghansham Karshandas Patel residing at Sriram Society, Morbi which is deposited vide mudamal receipt No.304/97. The copy of the panchnama was also produced. At the end of the report, the police inspector has opinioned that the said mudamal may be returned to complainant (present petitioner) as the same was taken by the accused while committing the offences from the

petitioner.

#. It appears from the impugned order produced on running page 17 to 19 that the Learned Trial Judge has misconceived the provision of Section 451 of Criminal Procedure Code, 1973 (hereinafter referred to as 'Code') and has misdirected to the facts. It is observed by the trial court that offences registered against the accused are exclusively triable by the Court of Sessions and therefore the trial court has no jurisdiction to pass any order in respect to giving custody of the mudamal articles pending enquiry or trial. On the said reasoning, the trial court has rejected the application and thereby petitioner has filed present petition.

#. The learned APP Mr. Patel has contended that mudamal articles consist of not only cash amount but various household articles and therefore unless it is decided who is the owner of the said articles, mudamal cannot be returned as claimed by the petitioner.

#. It may be noted that Section 451 of the Code confers discretionary power on the trial court to pass any order in respect to custody of the mudamal articles which is produced before the Court pending enquiry or the trial and if mudamal article are of such nature which is subject to speedy and natural decay or otherwise, if it is expedient to do so, the Court may pass appropriate order after recording evidence and reasons to dispose of the said property by sale.

#. The mudamal articles in the present case being precious articles of gold ornaments and huge amount of cash which according to complaint is robbed by the accused while committing the offences; in the absence of any conflicting claim made by any party, the trial court ought to have given custody of the goods by taking necessary undertaking, bond or putting the petitioner to some conditions. The trial court having failed to do so appears to have committed an error of law either by confusion or otherwise as such it is necessary to rectify the same.

#. On the basis of foregoing discussions, the petition is allowed. The trial court is directed to entrust custody of mudamal articles to the petitioner as prayed vide application dated 26th December, 1997 by taking appropriate undertaking or security for production of the same, if necessary during the trial or otherwise. Rule is made absolute accordingly. No order as to costs.

Date : 28-8-1998 (A.K.Trivedi,J.)

(KPP)